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**Martin J. Huelsmann
Chairman**

**Gary W. Gillis
Vice Chairman**

**Robert E. Spurlin
Commissioner**

July 8, 2002

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street SW, CY-B402
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Secretary Dortch:

Re: Application of BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Alabama, Kentucky, Mississippi, North Carolina and South Carolina (WC Docket No. 02-150)

Enclosed is the Advisory Opinion issued by the Kentucky Public Service Commission regarding BellSouth's InterLATA entry, dated April 26, 2002. Also, enclosed is the May 24, 2002 Amendment to the Advisory Opinion. We ask that the FCC consider these documents to be the Kentucky Public Service Commission's consultation pursuant to 47 U.S.C. Section 271(d)(2)(B). Also, enclosed is the May 24, 2002 order denying the motion for rehearing of Southeastern Competitive Carriers Association. All copies are certified. If you have any questions regarding these enclosures, please contact Amy Dougherty Staff Attorney, at 502-564-3940 ext. 257 or at aedougherty@mail.state.ky.us.

PUBLIC SERVICE COMMISSION

Martin J. Huelsmann
Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

cc: Honorable John Ashcroft, Attorney General of the United States of America w/attachments
Janice Myles, Wireline Competition Bureau w/attachments
2001-105 Service List w/o attachments

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JUL 1 2 2002

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

CERTIFICATE

This is a true and complete copy of the Kentucky Public Service Commission Order entered into the record.

Thomas A. [Signature]
Executive Director

7-8-02

Date

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY
OF PROVISION OF INTERLATA SERVICES BY
BELL SOUTH TELECOMMUNICATIONS,
INC., PURSUANT TO THE TELECOMMUNICATIONS
ACT OF 1996

)
) CASE NO.
) 2001-00105
)
)

ADVISORY OPINION

On April 26, 2001, on its own motion, the Commission instituted this proceeding in order to compile a record that would enable the Commission to advise the Federal Communications Commission ("FCC") as to whether BellSouth Telecommunications, Inc. ("BellSouth") should be permitted to enter the in-region, interLATA market in Kentucky pursuant to Section 271 of the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56, 47 U.S.C. § 151 et seq. ("the Act").¹ The FCC will make its decision on BellSouth's application based on whether BellSouth has complied with the fourteen point competitive checklist at Section 271(c)(2)(B) (the "Competitive Checklist"); whether the in-region, interLATA services will be provided in accordance with the separate affiliate requirements of Section 272; and whether in-region, intraLATA entry is consistent with the public interest, convenience, and necessity. 47 U.S.C. § 271(d)(3). This Commission is

¹ By the same Order, the Commission closed Case No. 1996-00608, Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, the predecessor case, citing a record that had become partially obsolete due to the rapid development of technology.

to advise the FCC as to whether BellSouth complies with the requirements of Section 271(c). 47 U.S.C. § 271(d)(2)(B).

Intervenors in this case include AT&T Communications of the South Central States, Inc. ("AT&T"); Sprint Communications Company L.P. ("Sprint"); MCI Telecommunications Corp., MCI Metro Access Transmission Services, Inc., and WorldCom, Inc. (collectively, "WorldCom"); American Communications Services of Louisville, Inc., American Communications Services of Lexington, Inc., and ACSI Local Switched Services, Inc. all d/b/a e.spire Communications, Inc. (collectively, "e.spire"); BellSouth Long Distance, Inc. ("BellSouth Long Distance"); LCI International Telecom Corp. ("LCI"); DeltaCom, Inc. ("DeltaCom"); the Competitive Telecommunications Association ("CompTel"); the ICG Telecom Group, Inc. ("ICG"); NuVox Communications ("NuVox"); the Southeastern Competitive Carriers Association ("SECCA"); and the Telecommunications Resellers Association ("TRA").

BellSouth previously has filed notices of intent to file with the FCC a Section 271 application to enter the in-region, interLATA market in Kentucky. This Commission conducted a 5-day hearing on these matters the week of August 25, 1997 and a 2-day hearing on August 20-21, 1998. Since these hearings were held, BellSouth has continued to improve and enhance its systems and facilities for competitive local exchange carrier ("CLEC") support.

By Order dated July 13, 2001, the Commission scheduled two hearings in this proceeding regarding whether BellSouth should gain in-region, interLATA operating authority in Kentucky. The first hearing, held September 24, 2001, addressed BellSouth's performance measures. On October 19, 2001, the Commission adopted the performance

measures, benchmarks and retail analogs, and penalty plan adopted by the Georgia Public Service Commission.² The Commission adopted the SQMs proposed by BellSouth. BellSouth was ordered to measure the local number portability ("LNP") Disconnect Timeliness and hold any penalties associated with that measure in abeyance pending review, such review to be initiated no later than 6 months from the October 19, 2001 Order. Later in this document, we address BellSouth's actual performance and penalties paid pursuant to this plan.

The second hearing regarding BellSouth's compliance with Section 271 of the 1996 Telecommunications Act was held October 22-25, 2001. Parties have filed briefs and submitted additional information. On March 6, 2002, the Commission determined that the matter stood submitted.

THE LEGAL FRAMEWORK FOR BELL SOUTH'S IN-REGION INTERLATA ENTRY IN KENTUCKY

Section 271 of the Act requires a regional Bell operating company ("RBOC") to show that it satisfies the requirements of either 271(c)(1)(A) ("Track A") or 271 (c)(1)(B) ("Track B") in order to receive FCC approval of its application to enter the interLATA market in its region. For the reasons stated below, as well as those reasons stated in its previous Orders in Case No. 1996-00608, this Commission has concluded that BellSouth must comply with Track A requirements to provide in-region, interLATA service in Kentucky.

In 1996 interconnection requests were submitted to BellSouth by competitors including intervenors e.spire (formerly "ACSI"), AT&T and WorldCom. Subsequently, the

² Performance Measurements for Telecommunications Interconnection, Unbundling and Resale, Docket No. 7892-U, Document No. 44192 and Document No. 46998, Georgia Public Service Commission, dated January 16, 2001 and May 7, 2001, respectively.

terms of interconnection with AT&T and WorldCom were arbitrated by the Commission in dockets numbered 1996-00482³ and 1996-00431,⁴ respectively. In both dockets, the Commission set appropriate rates and the parties' agreements incorporated those rates. Interconnection agreements between BellSouth and AT&T and BellSouth and WorldCom were approved on August 21, 1997. In addition, an interconnection agreement between BellSouth and e.spire, which has constructed facilities in Kentucky, was approved by the Commission after an initial request for arbitration was withdrawn. It appears that the competitors in these early cases negotiated with BellSouth in good faith and have taken steps to implement their respective agreements, and numerous arbitrations have been handled by this Commission since. AT&T and Sprint, among others, recently arbitrated interconnection agreements with BellSouth.⁵ Accordingly, pursuant to Section 271(c)(1)(B) of the Act, the Commission concludes that BellSouth has received qualifying requests for access and interconnection and has acted upon these requests.

³ Case No. 1996-00482, The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C.

⁴ Case No. 1996-00431, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

⁵ Case No. 2000-00465, Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, and Case No. 2000-00480, The Petition of Sprint Communications Company, L.P. for Arbitration With BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of the Telecommunications Act of 1996.

In Case No. 1998-00348,⁶ the Commission approved BellSouth's most recently revised Statement of Generally Available Terms ("SGAT") proposal. In this docket the Commission assesses the access and interconnection provided by BellSouth to requesting facilities-based carriers based upon two factors: [1] the adequacy of access and interconnection provided for in "one or more agreements" with competitors, Section 271(c)(2)(A); and [2] the practical ability of BellSouth to provide the agreed-upon access and interconnection in such a manner as to permit the competitor to compete on equal footing with BellSouth.

PERFORMANCE REPORTING AND ENFORCEMENT MECHANISMS

Competition in Kentucky

Congress passed the Telecommunications Act of 1996 to increase competition in all segments of the telecommunications market. One of the specific goals of Section 271 of the Act is to advance the development of competition in the local telecommunications markets.

BellSouth has presented evidence that it has helped open the Kentucky local exchange market to competition. For example, BellSouth has entered into over 500 interconnection and resale agreements with CLECs. There are currently 70 operational CLECs providing local service to over 95,000 lines in Kentucky.⁷ Nearly 64 percent of these lines are served by CLEC-owned facilities. The collocation arrangements currently

⁶ Case No. 1998-00348, Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. of Section 251 and 252(d) of the Telecommunications Act of 1996 (Order dated March 15, 2002).

⁷ Prefiled Testimony of Cox at 16.

in place between BellSouth and CLECs enable CLECs to serve approximately 62 percent of BellSouth's combined total residential and business access lines.⁸ This level of competition is particularly encouraging when compared with market levels in Kansas, Oklahoma and Texas.⁹ BellSouth predicts that its entry into the interLATA long-distance market will encourage CLECs to engage in broad-based competition.¹⁰ In light of economic trends in New York and Texas, the Commission expects Kentucky to show increased levels of competition if BellSouth is allowed to enter the long-distance market.

Despite these positive trends, the state of competition in Kentucky is not ideal. CLEC market share in Kentucky currently measures below the national average.¹¹ The Commission is also concerned by the fact that UNE-based (unbundled network element) competition comprises only 1.5 percent of the total market. And while the number of operational CLECs in Kentucky is encouraging, CLECs still comprise less than 5 percent of the local telecommunications market.¹² To its credit, BellSouth has taken positive steps to address these issues. On December 18, 2001, in Administrative Case No. 382,¹³ the

⁸ Prefiled Testimony of Cox at 18.

⁹ Id. at 16-17.

¹⁰ Id. at 17.

¹¹ CLECs in BellSouth's service area serve 7.3 percent of total local lines. The Association for Local Telecommunications Services projects that CLECs serve 9.3 percent of total local lines nationwide. We note that on April 16, 2002, MCI/WorldCom filed a tariff for local residential service in Kentucky. This service is to be available in BellSouth's UNE zones 1 and 2.

¹² Prefiled Testimony of Gillan at 4.

¹³ Administrative Case No. 382, An Inquiry Into the Development of Deaveraged Rates for Unbundled Network Elements, Order dated December 18, 2001.

Commission established cost-based rates for all BellSouth UNEs, interconnection and ancillary services. The Commission believes that final cost-based UNE rates are critical to the creation of stable market conditions for local competition.

The Commission is confident that BellSouth will do its part to maintain conditions favorable to competitive growth. However, the Commission has the ultimate responsibility of ensuring that competition in Kentucky continues to thrive and grow. In order to maintain the current level of competition and expedite the resolution of future disputes, the Commission has implemented a performance measure and penalty plan based on Georgia's Performance Assurance Plan. Commission Staff will continue to work closely with BellSouth and monitor its performance to ensure that it maintains compliance with Section 271.

Performance Measurements and Penalties

To assess levels of service provided to competitors, each state must have in place a set of performance measures. Within Kentucky these performance measures assist the Commission in gauging compliance and service level activity. In 1999, the Commission began working in concert with the other states in the nine-state BellSouth region to assimilate information with regard to BellSouth's regional systems and CLEC expectations, which culminated in the crafting of performance measurements. The Commission evaluated this joint approach and determined it would benefit Kentucky consumers and the overall industry to have a similar package of performance measures in BellSouth states. An adjunct of this decision is that it offers similar metrics when viewed as a whole that offer measurable comparisons in activity in one region as compared to another. Activity levels or the lack thereof, in certain service offerings, become evident.

On October 19, 2001, this Commission put in place the performance measures, benchmarks and retail analogs, and penalty plan adopted by the Georgia Public Service Commission.¹⁴ The Commission determined that a full-blown metrics review, a necessary component for developing quality service measures, was not a viable option and accepted the Georgia measures. BellSouth proposed a Self-Effectuating Enforcement Mechanism ("SEEM") which differed substantially from the one approved by the Georgia Commission. The Commission rejected this proposal, finding that it did not adequately protect the Kentucky market, and chose to implement the SEEM plan that Georgia adopted.

At the performance measurement hearing, BellSouth presented testimony regarding the difficulties associated with assessing the LNP Disconnect Timeliness measure. A decision on the penalties for failure to meet this measurement was held in abeyance and is undergoing further review by the Georgia and Kentucky Commissions.

The SEEM adopted by this Commission ordered penalty payments for service rendered on and after November 1, 2001. These payments are calculated in two tiers, with Tier I penalty payments directed to CLECs and Tier II payments to the Commonwealth of Kentucky. BellSouth has currently made four monthly Tier I penalty payments: \$64,039 in January; \$160,433 in February; \$73,564 in March; and \$77,184 in April. In addition, BellSouth has made two Tier II payments in the amount of \$29,435 in March and \$32,760 in April.

¹⁴ Performance Measurements for Telecommunications Interconnection, Unbundling and Resale, Docket No. 7892-U, Document No. 44192 and Document No. 46998, Georgia Public Service Commission, dated January 16, 2001 and May 7, 2001 respectively.

The Commission advises the FCC to review the penalty levels in Kentucky. The BellSouth Performance Measurement Analysis Platform Website ("PMAP") reports the penalties paid by BellSouth to Kentucky and Georgia and gives a quick snapshot of the relative performance in categories that have activity.

With this plan in place, Kentucky has implemented the necessary steps to monitor BellSouth's performance and prevent backsliding.

THE COMPETITIVE CHECKLIST

It is apparent that BellSouth has, in the past few years, made major advances toward achieving systems that will enable it to provide the necessary parity. BellSouth asserts that it has met all of the requirements of Section 271(c)(2)(B). BellSouth illustrates its views with references to interconnection agreements under which these services are available.¹⁵ BellSouth further asserts that it has met all of its obligations for creating the conditions for emergence of meaningful LEC competition in Kentucky.¹⁶ All of the conditions of Track A and the Competitive Checklist now have been met, though the Commission has certain concerns that are discussed below.

Item 1: Interconnection

Checklist Item 1, 47 U.S.C. § 271 (c)(2)(B)(i), requires BellSouth to interconnect with its competitors in accordance with the requirements of 47 U.S.C. § 251 (c)(2) and § 252(d)(1). These sections provide for interconnection for the purpose of transmission and routing of telephone exchange service and exchange access at any technically feasible

¹⁵ Prefiled Testimony of Cox, Exhibit CKC-2, at 1-9.

¹⁶ Prefiled Testimony of Dr. Taylor at 7.

point that is at least equal in quality to that provided by BellSouth to itself, its subsidiaries or affiliates, or any other party to which BellSouth provides interconnection. Moreover, this interconnection must be on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The pricing for this interconnection must be based on cost (determined without reference to rate of return or other rate-based methodologies). It must also be nondiscriminatory. It may, however, include a reasonable profit.

Methods of Interconnection

BellSouth asserts that CLECs may interconnect to its network through five methods: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber optic meet point arrangements; and (5) purchase of facilities from another party. Each of these arrangements is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross connect points, out of band signaling transfer points, and the point of access to UNEs.¹⁷ No one asserts that BellSouth fails to provide interconnection at any technically feasible point in its network.

The issues have centered on which parties will bear transportation costs originating on BellSouth's network to a competitor's point of interconnection ("POI") if that POI is located outside the boundaries of the LEC's predetermined local calling area. The Commission addressed these economic feasibility issues in two recent arbitration proceedings, one concerning Level 3 Communications, LLC¹⁸ and the other regarding

¹⁷ BellSouth Brief at 29; Prefiled testimony of Milner at 16-17.

¹⁸ Case No. 2000-00404, The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996.

AT&T.¹⁹ The Commission concluded in these arbitration proceedings that carriers are responsible for paying for their own originating traffic to the POI of a competitor, one per LATA. Having complied with the Commission's Orders regarding these issues of bearing costs for transporting originating traffic to POIs, BellSouth meets its requirement to interconnect at any technically feasible point.

Access to Interconnection Trunks

BellSouth asserts that it provides CLECs with interconnection trunking that is equal in quality to the interconnection it provides its own retail operations.²⁰ In Kentucky, 8820 interconnection trunks have been provided by BellSouth from CLEC switches to BellSouth switches and 3783 two-way trunks have been provided to 16 different CLECs.²¹ BellSouth also asserts that it provides access to interconnection trunks in a manner equivalent to that which it provides to itself, including the installation process, the use of the same equipment, interfaces, technical criteria, personnel, and service standards.²²

BellSouth asserts that allegations made by CLECs of trunk group blocking reports are inaccurate and outdated. According to BellSouth, its performance is better than that alleged by CLECs.²³

¹⁹ Case No. 2000-00465, referenced infra.

²⁰ Prefiled Testimony of Cox at 28.

²¹ Prefiled Testimony of Milner at 4.

²² Id. at 15-27.

²³ Transcript of Evidence ("TE"), Volume IV, at 114-120.

WorldCom argues that BellSouth should be forced to use two-way trunks that BellSouth provides to CLECs.²⁴ In a recent arbitration case between BellSouth and Sprint, the Commission required BellSouth to use two-way trunks when requested to do so by a CLEC.²⁵ BellSouth's compliance with this directive should ensure non-discriminatory trunking to CLECs.

Collocation

BellSouth's interconnection agreements contain collocation terms and conditions that comply with the FCC rules and with this Commission's determinations.²⁶ BellSouth offers many types of collocation including caged, shared cage, cageless, remote site, and microwave collocation. Adjacent collocation and virtual collocation are also available where needed. Moreover, BellSouth provides physical collocation at remote terminals.²⁷ And finally, BellSouth offers collocater-to-collocater cross-connects. BellSouth has provided approximately 200 physical collocation arrangements for over 20 CLECs in Kentucky. Also, CLECs are located in 30 of 178 BellSouth Kentucky central offices.²⁸

CLECs raised several areas of concern regarding collocation arrangements. For example, WorldCom has argued that BellSouth should provide a firm cost quotation within

²⁴ Prefiled Testimony of Argenbright at 14-15.

²⁵ Case No. 2000-00480, Order dated June 13, 2001 at 8.

²⁶ Prefiled Testimony of Cox at 28.

²⁷ Prefiled Testimony of Milner at 28-31.

²⁸ Id.

15 days of receiving a collocation application.²⁹ BellSouth responds that it will shorten the intervals for cost quotations if the CLECs adopt standardized pricing and other standardized fees.³⁰ This compromise appears reasonable.

World/Com also asserts that charges for physical collocation are too high.³¹ BellSouth responds that the current prices for space preparation are consistent with TELRIC principals and are based on forward looking, long-run incremental costs.³²

The Commission has reviewed BellSouth's collocation arrangements, including its intervals, and the economic limitations placed on CLECs by BellSouth's arrangements. We conclude that the collocation arrangements provided by BellSouth comply with Section 251. The Commission will continue to monitor both the arrangements and the pricing structure for the provision of collocation in Kentucky, including host-guest shared collocation arrangements, to ensure that BellSouth maintains non-discriminatory access.

Advanced Services and Broadband Infrastructure

The current marketplace demands that CLECs be able to offer customers advanced services, as well as a combination (bundle) of voice and advanced services. BellSouth is aggressively offering customers bundled voice and advanced services while, according to AT&T, BellSouth consistently precludes CLECs, who use the unbundled network element platform ("UNE-P") from offering customers this same option. This has the effect of chilling

²⁹ Prefiled Testimony of Bomer at 17-18.

³⁰ Prefiled Rebuttal Testimony of Gray at 46.

³¹ Prefiled Testimony of Bomer at 28-31.

³² Prefiled Rebuttal Testimony of Gray at 61-67.

local competition for advanced services. It appears that BellSouth intends to extend that policy position to the broadband services it offers over the fiber-fed, next-generation digital loop carrier ("NGDLC") architecture.³³

This Commission notes the continuing debate regarding the extent of state and federal jurisdiction over advanced services and related broadband telecommunications infrastructure. We hereby advise both the FCC and BellSouth of our plans to continue reviewing this quintessential telecommunications issue and actively pursuing a policy that promotes the statewide deployment of advanced services while offering CLECs a reasonable opportunity to compete. Non-discriminatory access to the necessary network components for the provisioning of advanced services will be an ongoing focus of this Commission. We continue to hold that UNEs will prove to be an important and efficient form of competition, especially for semi-rural states like Kentucky.³⁴ Resale and actual facilities-based competition will continue to have a place in ensuring competitive options for Kentucky's consumers, but UNEs give CLECS the unique capability of leveraging the existing infrastructure while promoting innovative service solutions for the smallest to the largest customers throughout the state, and, indeed, the entire nation. The fundamental principles expounded by the 1996 Act to promote competition in traditional circuit-switched technologies should be preserved and enhanced for the future's advanced services network.

³³ Prefiled Testimony of Turner at 3.

³⁴ See Case No. 2000-465, referenced infra.

BellSouth has met the requirements of Checklist Item 1.

Item 2: Nondiscriminatory Access to Network Elements

Checklist Item 2 requires nondiscriminatory access to network elements in accordance with 47 U.S.C. § 251(c)(3) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(ii). To meet this standard, BellSouth must provide to any requesting carrier nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. BellSouth must also provide UNEs in a manner that allows the requesting carrier to combine such elements in order to provide such telecommunications service.

BellSouth's Operational Support System

In contending it has met all of its obligations, BellSouth points to nondiscriminatory access to its operational support system ("OSS") in compliance with the FCC's requirements that it offer access to CLECs that is analogous to the OSS functions that it provides to itself and in substantially the same time and manner.³⁵ In asserting that its OSS system is nondiscriminatory BellSouth contends that it has deployed the necessary systems and personnel to provide efficient access to each of the necessary functions and that it is adequately assisting competing carriers to understand, implement, and use the OSS functions.³⁶ Moreover, according to BellSouth, the OSS functions that it has

³⁵ Prefiled Testimony of Pate at 12.

³⁶ Id. at 12.

employed are operationally ready. According to BellSouth, in 2000, CLECs sent 2,886,673 local service requests on a regional basis via BellSouth's electronic interfaces.³⁷ BellSouth asserts that the level of commercial usage alone demonstrates its operational readiness for these interfaces.

WorldCom challenges BellSouth on its OSS readiness. WorldCom has released small batches of orders in Georgia over the past several years, readying themselves for major penetration. When WorldCom placed firm orders in high volumes, numerous problems occurred in BellSouth's OSS systems, causing a quantity of reject orders.³⁸ This volume stress testing, according to WorldCom, demonstrates a vulnerability of BellSouth's OSS.

Nondiscriminatory Access to OSS

In discussing the regionality of its functions, BellSouth asserts that the interfaces to its OSS are the same in Kentucky and all of the other states in the BellSouth region. Thus, BellSouth's OSS provides CLECs with region-wide (1) electronic and manual ordering interfaces that provide uniform functionality; (2) comprehensive set of user guides, procedures, information, and job aids for the use of the electronic and manual ordering interfaces; and (3) region-wide business rules with extensive training.³⁹ BellSouth asks this Commission to use the results of the independent third-party OSS test in Georgia

³⁷ Id. at 5.

³⁸ Prefiled Testimony of Lichtenberg at 2-3.

³⁹ Prefiled Testimony of Pate at 178-191.

combined with evidence of actual commercial usage to determine that BellSouth provides nondiscriminatory access to its OSS in Kentucky.⁴⁰

An area of specific focus for this Commission was the different systems used by BellSouth in its processing of orders received at the Local Carrier Service Center. BellSouth personnel rely on separate electronic interfaces (DOE/SONGS) for Southern Bell states (including Georgia) versus South Central Bell states (including Kentucky) for order entry. BellSouth enlisted the services of PriceWaterhouse-Coopers, who examined the different interfaces and generally concluded that, although not identical, the two systems functioned similarly.⁴¹ The functional equivalence of these OSS systems, along with any other potential differences in processing that may remain undiscovered, is important due to this Commission's reliance on Georgia's performance plan including test data, third-party validation and volume testing. Similarly, much of the following discussion and analysis is hinged on the adequacy of the OSS as reviewed by the FCC in the GA/LA proceeding.

The independent testing conducted by KPMG for the Georgia Public Service Commission focused on normal and peak volume testing of UNEs and resale service requests on UNE analog loops, UNE switch ports, and UNE loop/port combinations. In addition, the test focused on Electronic Interface Change Control Process, preordering, ordering, and provisioning of various types of Digital Subscriber Loop, XDSL capable

⁴⁰ Id. at 192.

⁴¹ BellSouth Brief at 6-13, citing SWBT-KS/OK Order, ¶¶ 110-116.

loops, preordering, ordering, provisioning, maintenance and repair of resale services, and processes and procedures supporting the collection and calculation of performance data.⁴²

BellSouth testified that less than 2 percent of KPMG's third-party test criteria "were not satisfied" and that approximately 96 percent of the tests indicated that they were "satisfied" or that KPMG determined that no report was necessary on that criteria.⁴³

According to AT&T, BellSouth errs in claiming that the third-party test in Georgia has all of the qualities of the New York third-party test. AT&T's testimony highlights specific OSS deficiencies identified by AT&T's market entry efforts for UNE-P business and UNE-P resident.⁴⁴ AT&T cites a lack of equivalent access to pre-ordering and due dates, order flow-through difficulties, inaccurate ordering and provisioning notices, lack of capacity, discriminatory order cycle time, lack of equivalent functionality for maintenance and repair processes, lack of efficient customized routing to OS/DA, and a failure to follow the appropriate change control processes.⁴⁵

BellSouth asserts that it provides CLECs a way to preorder and order XDSL capable loops in a non-discriminatory fashion.⁴⁶

⁴² Prefiled Testimony of Pate at 8.

⁴³ Prefiled Testimony of Varner at 5.

⁴⁴ Prefiled Testimony of Bradbury at 7.

⁴⁵ Id. at 4-6.

⁴⁶ Prefiled Testimony of Latham at 1.

Preordering

CLECs have access to three different interfaces to preordering databases. These are TAG, RoboTAG, and local exchange navigation system or LENS. These interfaces for real time access to databases support CLEC-owned facilities, UNEs, and resale.⁴⁷

Response Times. CLECs have argued that BellSouth's answering times are slower for them than for BellSouth's own retail customers.⁴⁸ CLECs have also asserted that preordering response times for customer service records ("CSRs") via LENS are inappropriate and that BellSouth is not measuring the proper interval for response time.⁴⁹

BellSouth appears to have adequately addressed CLEC concerns regarding response times and preordering mechanisms.

Parsing. AT&T contends that BellSouth lacks equivalent access to pre-ordering, including integration and parsed CSRs. BellSouth does not provide CLECs with equivalent access to parsed CSRs to facilitate integration of pre-ordering and ordering functions whereas BellSouth's retail operations have such integrated access.⁵⁰

BellSouth asserts, on the other hand, that it provides CLECs the ability to parse information on the CSRs using the integratable machine-to-machine TAG preordering interface, and that this complies with the FCC mandate.⁵¹ Though BellSouth asserts it is

⁴⁷ BellSouth Brief at 40.

⁴⁸ Prefiled Testimony of Bradbury at 48-49.

⁴⁹ Id. at 46-47.

⁵⁰ Id. at 36-42.

⁵¹ Prefiled Rebuttal Testimony of Pate at 91-92.

not required to parse CSRs, it agrees that the Georgia Public Service Commission has ordered it to do so effective January 1, 2002. Based on the systemwide provision of preordering databases, we expect that BellSouth will then parse CSRs in Kentucky as well. If it does so, our concerns in this regard will have been addressed.

LENS Outages. CLECs have alleged LENS outages that affect their competitive operations. BellSouth asserts that it has complied with the benchmark for OSS availability since May 2001. Moreover, BellSouth asserts that it provides notifications to CLECs when outages last longer than twenty minutes.⁵²

Access Due Dates. AT&T claims that BellSouth fails to provide nondiscriminatory access to due dates because CLECs do not have access to a reliable automatic due date calculation capability for all products and services and because BellSouth's excessive reliance on manual processing for CLEC orders result in longer due date intervals.⁵³

BellSouth responds that it has corrected these delays in firm order confirmations ("FOCs") to CLECs. BellSouth now has an automatic due date calculation function in LENS and TAG.⁵⁴ BellSouth also notes that many of the difficulties regarding due dates have been caused by lack of training of CLEC representatives for which BellSouth is not responsible. During the years we have reviewed this issue, BellSouth has improved its performance in this area substantially. Though we expect BellSouth to continue to improve

⁵² BellSouth Brief at 43.

⁵³ Prefiled Testimony of Bradbury at 42-45.

⁵⁴ Prefiled Testimony of Pate at 78-79 and Prefiled Rebuttal Testimony of Pate at 85-86.

its process, we do not believe that the remaining problems prevent BellSouth from providing non-discriminatory service.

Loop Make-up Information. Sprint described concerns of the access that BellSouth provides to Loop Make-up information.⁵⁵ Moreover, Sprint asserts that BellSouth has additional loop make-up data available to itself that is not available to CLECs.⁵⁶

BellSouth responds that it provides to CLECs the same detailed loop qualification information contained in the loop facility assignment and control system ("LFACS") that it provides to itself. Sometimes this information must be obtained through a manual loop make-up request; nevertheless, it is available. BellSouth further asserts that it has made software upgrades and other improvements to allow better access to the loop make-up information. The Commission finds that this information is appropriately made available to CLECs. We will continue to monitor BellSouth's system upgrades.

Ordering and Provisioning

This section deals with those processes used by CLECs to request facilities and services from BellSouth and receive confirmation that the facilities or services have been ordered as requested. In addition to the interfaces already discussed, BellSouth provides EDI. Though BellSouth asserts this capability is not required for it to meet this item of the checklist, it does now provide telephone number migration. The Commission finds that the provision of telephone number migration is necessary and is being provided by BellSouth at this time.

⁵⁵ Prefiled Testimony of Felton at 3-5.

⁵⁶ Id. at 4.

BellSouth's own past performance data indicates that it takes approximately twice as long on average to complete CLEC orders than similar BellSouth retail orders, according to AT&T.⁵⁷ BellSouth, on the other hand, has presented evidence regarding advances in its ordering and provisioning processes. The Commission finds that these processes are now adequate as detailed below.

Migration by Telephone Number. WorldCom testified that BellSouth must be able to permit CLECs to process orders based only on the customer's telephone number with no additional information.⁵⁸ Though BellSouth asserts this capability is not required for it to meet this item of the checklist, having been so ordered by the Georgia Public Service Commission, it does now provide telephone number migration. The Commission finds that the provision of telephone number migration is, in fact, a vital ingredient in the provision of nondiscriminatory service to CLECs. The Commission also finds that it is being adequately provided by BellSouth at this time.

Order Flow-Through. BellSouth relies excessively on manual processes to handle CLEC orders, particularly for UNEs, UNE Combinations, Number Portability, and xDSL, according to AT&T. BellSouth does not provide CLECs with electronic ordering capability for many services and transactions. Even where electronic ordering is available, an inordinately high percentage of electronic CLEC orders fall out for manual processing because of BellSouth system design or errors. In contrast, all of BellSouth's retail orders

⁵⁷ Prefiled Testimony of Bradbury at 83-85.

⁵⁸ Prefiled Surrebuttal Testimony of Lichtenberg at 7.

can be processed electronically and nearly all are processed electronically without any human intervention.⁵⁹

BellSouth argues that these facts do not show discrimination. They simply show the nature of its business, which results in a higher percentage of its orders being processed on a mechanized basis. Complex orders are processed manually, for both BellSouth and CLEC customers. BellSouth asserts that it is providing firm order confirmations ("FOCs") and rejects in a timely manner and that when orders do "fall out" for manual handling, they are addressed in a timely fashion.

CLECs also argue that BellSouth's use of two orders to accomplish a change of end-user carrier - the first to disconnect the customer from BellSouth and the second to connect the customer to a CLEC - sometimes results in discontinued service for the end-user. This has a potentially damaging impact on the competitor. BellSouth is correcting this problem by instituting a single order for conversion. The Commission finds that BellSouth's advances in its flow-through process are sufficient to comply with this checklist item. The single C order slated for implementation in Kentucky should be so implemented in order to meet this checklist item.

Order Status Notices and Average Installation Intervals. AT&T asserts that BellSouth inaccurately provides order rejections, FOCs, and order jeopardy notices. These notices are not delivered in a consistently timely manner.⁶⁰

⁵⁹ Prefiled Testimony of Bradbury at 5.

⁶⁰ Id. at 5.